IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.923 OF 2005

Mehta Petro Refineries Ltd. .. Petitioners

Versus

Ansuya Paints Pvt.Ltd. .. Respondents

Mr.R.M.Pande for petitioners

Mr.Rabindra Hazari for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th January 2007.

P.C.

. Heard Mr.Pande for petitioner and Mr.Hazari for respondent. This petition for winding up of respondent is presented by the

petitioner on the basis that the petitioner sold, supplied and delivered mineral terpentine oil to the respondent company, pursuant to the orders placed in that behalf. Bills were raised for the supplies between 2002 to 2003 and a total amount of Rs.9,43,674 was demanded. It is pointed out that the liability was admitted and an entry in that behalf is made in the balance sheet of the company as on 31st March 2003.

2. Mr.Pande submits that the goods have been received at site so also the invoices/bills. There is absolutely no defence to the claim inasmuch as , no dispute is raised with regard to the quality and quantity of goods. Claim is acknowledged and admitted as is clear from the entry in the balance sheet.

3. It is contended that thereafter, the petitioner forwarded their statement of account and reminded the company to pay its outstanding

dues. There were personal visits and discussions took place therein. Although, the payment was assured, respondent took no steps to make payment.

4. Thereafter, as enumerated in paras 11, 12 cheques for Rs.1,41,521/- were forwarded which were dishonoured on presentation. Advocate's notice dated 6th September 2005 (statutory notice) was despatched but there is no reply, despite due receipt of the same. Thus, an amount of Rs.9,42,674/- being principal and Rs.7,07,753/- towards interest is due and payable as per the particulars of claim.

5. An affidavit in reply has been filed by the company and Mr.Hazari relies upon the same. He submits that all claims in the petition are time barred. Supply of goods as per various bills is during the period 2nd December 2001 to 31st October 2002. The invoices, according to

respondent aggregate to Rs.5,72,971/-. However, the earliest invoice is of 18th December 2001 and the last invoice is dated 28th March 2002. Even statutory notice is dated 6th September 2005. He submits that the so called acknowledgement of liability in the balance sheet, is absolutely false and baseless, because there is not a single acknowledgement of debt or liability.

6. Mr.Hazari submits that the cheques referred to in para 11 of the petition were not issued against payment of any of the 25 invoices which form basis of the alleged claim but it is on account payment. The practice of the company is to mention invoice/bill number on the reverse of the cheque which is not there in the instance case. There are no proceedings taken and hence, the claim is hopelessly time barred.

7. Mr.Hazari has also invited my attention to the without prejudice statements in the reply.

He submits that there is a reference to statement of account but the same has not been produced nor extract or copy thereof annexed to the petition. It appears that the claim is at the foot of account. In such circumstances, inviting my attention to paras 11 and 12 of the petition, Mr.Hazari submits that the petition cannot be entertained.

8. Lastly, he submits that the petitioner has not approached this Court with clean hands inasmuch as it has suppressed the correspondence viz., letter dated 17th November 2004 addressed by the petitioner and the reply thereto on 24th November 2004. A specific plea was raised in the reply to this letter that petitioner had agreed to give credit to damaged and sub-standard/inferior quality of goods and thus, either rectify the same or compensate respondent for losses.

9. Further he submits that the original invoice made available for inspection does not contain any stipulation for payment of interest. For all these reasons and on account of bonafide dispute raised and contentious issues involved, this Court should not entertain the present petition.

10. Mr.Panday has invited my attention to the affidavit in rejoinder filed by petitioners. He submits that the petitioners were in possession of the original invoices and the averments in the petition were based upon the same. Merely because all invoices or copies thereof are not annexed, does not mean that the petitioner is not entitled to any relief. Further, by mistake only photocopies of the front page of the invoice was annexed and not rear/reverse portion thereof. Mr.Panday has contended that there is no question of the claim of the petition being time barred inasmuch as the cheques which have been issued by

the company and details of which are set out in para 11 are issued in 2003, the first cheque dated 18th July 2003 and last being dated 26th September 2003. Assuming without admitting that there is some dispute with regard to acknowledgement of liability in the balance sheet, yet, this is not a case where the petition could not be presented. The company is raising all disputes for the first time. It is avoiding making payment. The cheques have been dishonoured. It is not open for the respondent now to allege that it is not obliged to pay any sums or only the principal but not interest.

11. With the assistance of the learned Advocate appearing for both sides, I have perused the petition, annexures thereto so also, the reply and rejoinder affidavit.

12. Claim of the petitioner is based upon supply of goods. While it is true that the

orders have been placed and goods supplied between December 2001 to October 2002, yet, some of the invoices are raised in February 2002. The cheques have been forwarded as set out in para 11. In reply to para 11 of the petition, the company states that the cheques were issued in respect of other invoices which amounts were required to be adjusted due to huge rejection of adulterated and inferior quality of material supplied by the petitioner to the respondent. In my view, once such a stand is taken by the respondent, it ought to have placed before this Court, cogent and satisfactory material, including copies of correspondence. By merely relying upon the letter addressed in November 2004 and orally submitting that there were large number of complaints from the dealers of respondent with regard to adulterated and inferior quality of goods, respondents cannot, prima facie avoid its liability. Similarly, plea of limitation is raised but there is absolutely

no answer to the issuance of cheques, details of which, are set out in para 11 of the Company Petition. With regard to the balance sheet, it is contended that the balance sheet of 31st March 2003 is not produced. In my view, assuming that the Balance Sheet of the year ending 31st March 2003, is being relied upon by the petitioner and it was obliged to furnish an extract thereof, yet, there being prima facie no explanation for the forwarding of cheques and their dishonour, so also the company raising dispute with regard to stipulation for interest in the invoices, a conclusion can safely be drawn that it is not disputing its liability to pay a substantial sum, if not the entire principal amount.

13. In that behalf, it would be worthwhile reproducing para 11 of the affidavit in reply. The same reads as under:-

"11. Without prejudice to the

aforesaid, I respectfully submit that the petitioner's claim that the respondent is required to pay an outstanding amount of Rs.9,42,674 together with interest at 24% thereon being a sum of Rs.7.07,753.50, the total being the sum of Rs.16,50,427.50 as alleged in para 12 and in other places of the said petition, is actually contradicted by the very documents which the petitioner is relying on to support this fictitious claim. It may be seen that the said 25 invoices, aggregate only Rs.5,72,971 and not Rs.9,42,674 being the alleged principal amount claimed by the petitioner, in respect of which no evidence whatsoever has been produced. Furthermore, the alleged claim of interest is not maintainable as inter alia, there is no interest clause whatsoever in any of the said 25 invoices which are annexed to the

> said petition and inspection of which was accorded by the petitioner on 12th April 2006. In this regard, my Advocate's letters dated 13th April 2006 and 19th April 2006 that the original invoices produced for inspection did not have any written and/or printed matter on the reverse is relevant as there is no clause or contract or any understanding whatsoever between the parties whereby the respondent company is obliged to pay interest on any outstanding amount as falsely claimed by the petitioner."

14. In these circumstances, I am of the view that instead of passing an order admitting the company petition, interest of justice would be sub-served if opportunity is given to the company to substantiate its pleas as raised on affidavit. However, it would be necessary to protect the interest of petitioners, atleast to the extent of

Rs.5,72,971/-. If that sum is brought in Court by the respondent, without prejudice to its rights and contentions, in my view, it would be then appropriate to grant an opportunity to the petitioner to file a suit to substantiate its claim. If the amount is not deposited within the time stipulated, then consequences in law would follow.

15. Hence, the following order in my view would serve ends of justice. Respondent to deposit in this Court a sum of Rs.5,72,971 within eight weeks from today. In the event of deposit, liberty is granted to petitioner to file suit within four weeks thereafter. The said deposit would be without prejudice to the rights and contentions of both sides. If the suit is filed, the amount deposited shall be transmitted to the credit of that suit. If the suit is not filed within the stipulated time, respondents are at liberty to withdraw the deposited amount.

Needless to state that if the amount is not deposited within the time stipulated, company petition to stand admitted, without further reference to the Court.

(S.C.Dharmadhikari, J)